WONG FOONG SHIN v. REGINA

[A. Cr. J. (Murray-Aynsley C.J.) July 14, 1955]

[Singapore — Magistrate's Appeal No. 24 of 1955]

Trade Marks — Merchandise Marks Ordinance (Cap. 157), s. 12 — Possession for sale of goods with counterfeit trade mark — Whether Court can look at the general get-up of the goods.

This was an appeal against the conviction of the appellant on three charges under s. 12 of the Merchandise Marks Ordinance, of having in his possession for sale pencils and pens with a counterfeit trade mark affixed thereto, namely a mark so nearly resembling the "Arrow" trade mark, the property of the Parker Pen Company, as to be calculated to deceive.

The device of an arrow was registered by the Parker Pen Company in Singapore under the Trade Marks Ordinance and the evidence showed that all pens and pencils manufactured by the Parker Pen Company bore clips in the form of an arrow. The learned District Judge held that in order to reach a decision he should look not only at the clips but also at the articles as a whole including their general get-up.

Held: (1) as the particular form of the clip was the only mark which was alleged to have been counterfeited, it is necessary primarily to consider the clips; (2) other resemblances in the goods concerned were only relevant as regards intention so far as that may be material but unless that was so it was wrong to consider anything but the marks *per se*; (3) there was in fact no resemblance between the clips in the pens and pencils in this particular case, if the clips were looked at in isolation from the rest of the articles, and therefore the conviction of the appellant must be set aside.

MAGISTRATE'S APPEAL.

Dr. C. H. Withers-Payne for the appellant.

K. A. Seth (*T. H. A. Potts* with him) for the respondent.

Murray-Aynsley C.J. : — This was a trade mark case. The appellant was charged with counterfeiting the wellknown "Parker" trade mark on certain pens and pencils. This trade mark is the familiar arrow which has been registered. The pens and pencils have a clip in the form of a conventional arrow. Whether this can be considered as a trade mark I am uncertain and I do not decide the point. But the particular form of the clip is the only mark which is alleged to have been counterfeited.

As regards the articles of the appellant, it is clear that in their general get-up they closely resemble those of the complainants. But this is not here the matter for consideration. This is not a case of passing-off. It is necessary, primarily, to consider the clips. If these so closely resemble those of the complainants as to be likely to cause confusion it may be necessary to consider other resemblances in the goods concerned. This I think is relevant as regards intention so far as that may be material. But unless this is so I think that it is wrong to consider anything but the marks *per se*. It is in this respect that I differ from the learned District Judge.

In the present case, looking at the clips in isolation from the rest of the articles, I cannot see any resemblance except the general resemblance which all clips have one to another and which they must have in order to fulfil their mechanical purpose.

In these circumstances I allowed the appeal.

Appeal allowed.

Solicitors : *Drew & Napier; Sisson & Delay.*

LIM YAM HENG v. CHOO SWEE CHOO (f)

[A. C. J. (Tan Ah Tah J.) August 16, 1955]

[Singapore — District Court Appeal No. 15 of 1955]

Married Women and Children (Maintenance) Ordinance, 1949, ss. 2 and 4 — Claim for maintenance by wife — Offer by husband to maintain if she lives with him.

This was an appeal against an order made under s. 2(1) of the Married Women and Children (Maintenance) Ordinance, 1949, whereby the appellant was ordered to pay the sum of $50.00 monthly for the maintenance of his wife the respondent. It appeared that at the hearing the appellant informed the Court that he wanted his wife to return to the matrimonial home. The learned Magistrate made the order as he found that the appellant had made no effort to take his wife home.

Held: (1) if a wife leaves the matrimonial home and her husband offers to maintain her on condition that she lives with him in the matrimonial home there is no legal obligation on the husband to take positive steps to bring her home; (2) therefore the order made by the learned Magistrate in this case was wrong and must be set aside.

DISTRICT COURT APPEAL.

Lee Kuan Yew for the appellant.

Respondent in person.

Cur. Adv. Vult.

Tan Ah Tah J. : — This is an appeal from an order made on the 26th March 1955 under section 2(1) of the Married Women and Children (Maintenance) Ordinance No. 26 of 1949 by the Sixth Police Court whereby the appellant was ordered to pay the sum of $50 monthly for the maintenance of his wife, the respondent. At the hearing in the Police Court which commenced on the 12th March 1955 the appellant appears to have informed the Court that he wanted his wife to return to the matrimonial home. The matter was then adjourned to the 26th March 1955 on which date the abovementioned order was made.

Section 4 of the abovementioned Ordinance provides as follows :—

4. (1) If any person against whom an order has been applied for or made for the maintenance of his wife offers to maintain his wife on condition of her living with him, and his wife refuses to live with him, the Court may consider any grounds of refusal stated by such wife, and may make or enforce the order aforesaid, notwithstanding such offer, if satisfied that such person is living in adultery or that he has habitually treated his wife with cruelty.

(2) No wife shall be entitled to receive an allowance from her husband under this Ordinance if she is living in adultery, or if without any sufficient reason she refuses to live with her husband.

The only reason given by the learned Magistrate for making the order is that the appellant made no effort to take his wife home.

In my opinion if a wife leaves the matrimonial home and her husband offers to maintain her on condition that she lives with him in the matrimonial home there is no legal obligation on the husband to take positive steps to bring her home. By what means and in what manner the wife is to return to her husband is a matter which depends upon the good sense of the parties but it is not laid down that the husband should bring his wife back to the matrimonial home.

I would therefore allow the appeal and set aside the order. The deposit should be paid out to the appellant's solicitors.

The appeal having been allowed, counsel for the appellant intimated, after discussion, that he would seek the aid of the Social Welfare Department in an endeavour to bring the parties together.

Appeal allowed.

Solicitors for the appellant: *Laycock & Ong.*

ONG CHIN SENG v. CHOP LEAN KOOI MOTORS

[O. C. J. (Hill J.) April 23, 1955]

[Alor Star — Civil Suit No. 117 of 1954]

Common Law — Lien — General lien and particular lien — Evidence to justify lien.

This was an action brought by the plaintiff against the defendant for alleged wrongful detention of his lorry. The defence was that the defendant was exercising his common law right of lien, as charges for repairs had not been paid.

Held: there was no evidence in this case that the plaintiff had refused to pay for the charges nor was there evidence of local custom and usage to establish the lien and therefore the defendant's retention of the plaintiff's lorry was wrongful.

CIVIL SUIT.

Nancy Yeap for the plaintiff.

A. Jayadewa for the defendant.

Hill J. : — In August last the plaintiff's lorry broke down and was towed to the defendant's garage where fairly extensive repairs were done to it. These were completed by the 28th August and on that day one of the plaintiff's drivers drove away the lorry with defendant's permission.

Three days later it was again in defendant's garage for very minor servicing and was again delivered to the plaintiff's driver.

On the 19th September the lorry again broke down and for the third time was taken to defendant's garage. On this occasion, as the defendant had not been paid for the work done and improvements made to the lorry, he detained it and this case results.

There was no evidence that plaintiff at any time refused to pay the bills that had been rendered by the defendant. He had queried one item for $260 for work on the engine and suggested that this charge was too high. On the 15th September plaintiff wrote the defendant as follows :—

"I have received the following two invoices. It is found that in the contents the following: 'Charges for taking down engine' is as high as $260. I do not know if a mistake was made in your bill, for motor merchants in this town charge only about a hundred dollars for this item: Charges for taking down engine.' Even a European firm would charge only $110 - $120 but your charges actually exceeded by more than half which is indeed deeply alarming. It is my wish and hope that you will reckon and amend accordingly so as to smooth the way."

Three days later the lorry was detained.

The defence was that the defendant was exercising his common law right of lien. I here quote paragraphs 704, 708 and part of paragraph 709 from pages 560, 561 and 563 of *Halsbury's* Laws of England, 2nd edition, Volume 20 :—

"To establish a general lien arising by usage in a particular case, for instance, in a particular locality, the usage must be certain and reasonable and so universally acquiesced in that every one in the trade knew of, or on inquiry could have ascertained, its existence. To establish a general lien of this nature there must be satisfactory evidence of numerous and important instances of its exercise; if the evidence is sufficient to establish the usage, the parties are presumed to be aware of, and are bound by, the usage. The question whether the lien exists is one of fact.

A particular lien arising by agreement on property deposited overrides the general lien of the depositee on such property arising by virtue of usage.

A particular lien is the right to retain goods in respect of which charges have been incurred until such charges have been paid: if the owner of the goods is willing to satisfy such charges, the goods cannot be retained until payment of the general balance due to the person having the particular lien.

As general liens may arise from general usage or by express contract, it follows, a *fortiori*, that particular liens may arise in the same manner."

I had no evidence, much less satisfactory evidence of numerous and important instances of the custom defendant stated was in existence and adopted by him.